

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

VALERI V. ARTIOUKHINE,
Complainant,

v.

KURANI, INC.,
DBA PIZZA HUT,
Respondent.

)
)
) 8 U.S.C. § 1324b Proceeding
)

) OCAHO Case No. 97B00161
)

) Judge Robert L. Barton, Jr.
)
)
)

ORDER REQUIRING RESPONDENT TO FILE AFFIDAVITS
(February 5, 1998)

During a telephone prehearing conference held on December 2, 1997, I gave Respondent leave to file, not later than December 17, 1997, a motion to dismiss this case for lack of jurisdiction, along with supporting payroll records and an affidavit. I explained that the affidavit must be prepared and signed by a person who is familiar with the payroll records and can swear to their accuracy and authenticity.

As of December 19, 1997, Respondent's motion and accompanying payroll records and affidavit had not reached my office. I issued an order on that date in which I required Respondent to submit copies of its payroll records for both calendar years 1995 and 1996 no later than January 15, 1998. Respondent's Motion to Dismiss arrived in my office on December 22, 1997. Respondent had mailed it from Anchorage, Alaska, via Express Mail on December 16, 1997. Respondent attached payroll records to its Motion, but it did not include the necessary affidavit, which means a sworn statement. Respondent's representative, Kurani Vice President Vincent Voss, asserted in an unsworn statement that he is familiar with the information and that it is a true and accurate copy of the actual payroll records. By Order dated December 22, 1997, I allowed Respondent until January 15, 1998, to file the affidavit.

The required affidavit had not reached my office by January 15. My law clerk telephoned Mr. Voss on January 21 to try to determine why the affidavit had not yet arrived. Mr. Voss informed my clerk that the affidavit was sent via Express Mail on January 9 and that he previously had confirmed that it was delivered on January 12. In addition, Mr. Voss faxed to my office a copy of the package's address label and a copy of its Express Mail tracking information. The package was properly addressed to me at my office. The next day, my legal technician telephoned the local Post Office and learned that the package in question had been delivered to our building's mail

room. Even though that package had managed to find its way to the appropriate building in Falls Church, Virginia, all the way from Anchorage, Alaska, for some inexplicable reason the package has been unable to complete the final leg of its journey from the mail room to my office.

In light of what seemed a remote chance that the original affidavit ever would surface, I had my law clerk telephone Mr. Voss and ask him to FAX a copy of the affidavit. My clerk left a voice mail message for Mr. Voss to that effect on January 23, 1998, and, having received no response to that message, she called him again on January 28 and spoke with him directly. During the January 28 telephone conversation, my clerk explained the problem with our mail room and asked Mr. Voss to FAX the affidavit. She gave Mr. Voss the FAX number for my office. In addition, during both the January 21 and 28 phone conversations, my clerk requested that Respondent provide information, also in affidavit form, that explains the markings on the submitted payroll records and on a chart Respondent submitted that purports to summarize the contents of the actual payroll records.

To date, Respondent's affidavit has not reached my office, neither in the original package Respondent sent by Express Mail, nor by FAX. Although Respondent selected an expedited delivery service to convey the affidavit and followed up on the package's progress by confirming its delivery even before anyone from my office called with the information that I had not received the affidavit, Respondent has failed to FAX the affidavit and has failed to return telephone messages. Such conduct is not acceptable.

Respondent now is being ordered to FAX the affidavit to my office no later than February 20, 1998, and, also by that date, Respondent must file¹ its second affidavit that provides the additional information regarding an explanation of the markings on the payroll records and payroll summary.² Respondent also must indicate that it has sent the affidavits to Complainant.

If Respondent fails to comply with this Order by the due date, severe sanctions may be imposed on Respondent and/or Respondent's representative, Mr. Voss. Specifically, if Mr. Voss continues to ignore the directions of this Court, he may be barred from any further participation in this proceeding. 28 C.F.R. § 68.35 (1997) (judge may exclude a representative from a proceeding for refusal to comply with directions). I also may enter a default judgment against Respondent. See 28 C.F.R. § 68.37 (1997). A copy of this Order is being sent to the President of the Respondent.

¹ "File" means that the documents must be received in my office by the given date, not that it merely must be postmarked by then. See 28 C.F.R. § 68.8(b) (1997).

² I accept documents for filing by FAX; however, if Respondent chooses to file its second affidavit by FAX, that does not eliminate the requirement that it send the original plus two copies by regular mail, see 28 C.F.R. § 68.6(a) (1997).

My office's FAX number is (703) 305-1515. If Respondent has any questions about this Order, it should feel free to contact my law clerk, Laura Conner, at (703) 305-1739.

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 1998, I have served the foregoing Order Requiring Respondent to File Affidavits on the following persons at the addresses shown, by first class mail, unless otherwise noted:

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(Complainant)

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Anchorage, AK 99518
(Respondent)
(By FAX and certified mail)

Vincent Voss, Vice President
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(Respondent)
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